IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2602 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT AGRICULTURAL UNIVERSITY

Versus

PRAKASH GIRISHBHAI MEHTA

Appearance:

1. Special Civil Application No. 2602 of 1996

MR H.A. DAVE FOR DEVANG NANAVATI for Petitioner No. 1

MS VINITA VINAYAK FOR M/S THAKKAR ASSOC. for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 09/04/2004

ORAL JUDGEMENT

Heard learned advocate Mr.H.A.Dave appearing on behalf of the petitioner - University and learned advocate Mr.Vinita Vinayak for respondent workman.

In the present petition, the petitioner University has challenged the award passed by the labour court, Junagadh in Reference No.832 to 834 / 1988 [new number LCJ No.1134 to 1136 / 1990] dated 6th December, 1995 whereby the labour court, Junagadh has set aside the termination order and granted reinstatement with 25 % back wages of the interim period. Learned advocate Mr.Dave for the petitioner university has submitted that the labour court has committed gross error in passing the award impugned in the present petition. It is contended that the respondent was employed as the labourer and not as the Typist by the University. That as and when the work was offered to the respondent, he had not carried out the said work and refused the same. The workman has not completed 240 days continuous service and the University has not terminated service of the workman as he left the work at his own and therefore, there is no violation of provisions of Section 25 [F], [G] and [H] of the I.D.Act, 1947 and therefore, question of breach of mandatory provisions does not arise. Learned advocate Mr.Dave also contended that subsequently the respondent had completed his study of LLB course and practicing as Advocate. Therefore, the labour court has committed gross error in passing the award in question while granting the relief in favour of the respondent. He also emphasised that muster roll has been produced by the petitioner, wherein name of the respondent as mentioned as the Labourer and not as Typist, whereas the workman has not produced any material to prove that he was working as Typist. Therefore, according to the learned advcoate Mr.Dave, the award in question requires to be interfered with by this Court and same deserves to be quashed and set aside.

Learned advocate Ms.Vinita Vinayak for the respondent workman submitted that no evidence was produced by the employer to prove the fact that the workman has left the job at his own. Learned advocate Ms.Vinayak has read over before this Court the contents of para-7 & 10, so also, para-4 of the award and contended that the labour court has rightly appreciated the evidence on record and this court cannot reappreciate the same as this Court having limited jurisdiction under Article 227 of the Constitution of India and hence, her request is the present petition may be dismissed.

I have considered submissions made by the learned advocates for both the parties. It has come on record that before the labour court, the statement of claim was filed by the workman vide Exh.4 wherein it was stated

that in different departments, they were working as the Labourer and Typist. That their services were terminated on 16th December, 1987, 16th October, 1986 and 31st July, 1985. Before terminating services, no notice, nor notice pay or no compensation was paid to the respondent workman. No seniority list was published and therefore, termination is illegal. Though, demand notice has been served by the workman but no reply is given by the petitioner.

The petitioner university has filed reply vide Exh.20, 22 and 24. The main contention raised that the present petitioner institution is receiving 100 % grant from the State Government and therefore, the State Government is the necessary party. They had denied the facts stated in the statement of claim and also contended that service of the workman has not been terminated by the petitioner but they had abandoned the work and therefoer, they are not entitled to any relief. It was further contended that inspite of the fact that they were called upon but they had not reported for work. That Shri Prakash Mehta was not working as Typist but he was working as Labourer and since the work was not available, that is how, his service was terminated by the petitioner. Vide Exh.21, 23 and 25 certain documents produced by the petitioner. The respondent workman had also produced certain documents at Exh.28 and thereafter, the workman was examined at Exh.15. Certain documents were produced by the workman vide Exh.29 to 34. Deposition of the workman supporting the statement of claim and denying the facts in cross examination to the extent that he himself abandoned the work, has been denied by the workman. On behalf of the petitioner, witnesses Kantibhai Devjibhai, Supervisor Shivlal Bhurabhai Patel and one Shri Abdul Kadar were examined at Exh.42, 46 and 44 respectively. That all the witnesses stated that the workman was working as the labourer and that he was not obeying the orders of the higher officers, coming on duty with children and since no work was available, that is how, she left the work on own volition and Prakashbhai Mehta was not working as Typist. Thereafter, the labour court has considered submissions made by the respective parties. After considering submissions made by the respective parties, the labour court has given finding in para-7. The labour court has come to the conclusion that the petitioner institution is an industry within the meaning of Section 2[j] of the I.D.Act, 1947 and therefore, in case of abandonment of the service, it is the duty of the petitioner to follow the prescribed procedure and to hold inquiry but that has not been done by the petitioner. As such, no notice was

issued nor any notice pay was paid to the respondent by the petitioner. Therefore, when the petitioner has not taken any step after abandonment of the job by the workman, then, statement which has been made by the workman in his deposition, has been believed by the labour court that their service has been terminated by the petitioner.

I have gone through the statement of claim and the written statement annexed to the petition. It transpires that some documents have been produced by the petitioner before the labour court to justify the working days of the respondent workman but no much details have been given that in each month, how many days the workman had actually worked. It is very relevant to note that the petitioner university has not raised any contention that the workman has not completed 240 days continuous service within last precedent 12 months. As such, no contention raised in the written statement and nor it seems to have canvassed before the labour court and therefore, in the circumstances, the labour court has presumed that the workman had completed 240 days continues service but since Section 25-F has not been complied with by the petitioner and the fact that evidence of the workman that at the time of terminating service of the workman, no notice, no payment and compensation has been paid to the workman, has rightly believed by the labour court and as such, no rebuttal evidence has been produced by the petitioner university before the labour court. Therefore, considering all these aspects of the matter and the fact that no gainful employment has been proved by the petitioner university before the labour court. The labour court has also rightly considered the decisions of the Apex Court so also, of this Court to come to the conclusion that in the facts and circumstances of the case, the workman as daily wager not entitled to full back wages but only granted 25 % backwages of the interim period. In such circumstances, according to my opinion, the labour court has rightly passed the award in question and the same can be said to be balance award and as such, the labour court has not committed any error in granting relief of reinstatement with 25 % back wages to the workman. There is no procedural irregularity committed by the labour court and no apparent error found on record and even in case of two views are possible, this Court cannot interfere with the award while exercising the powers under Article 227 of the Constitution of India.

In view of my aforesaid discussion, in my

opinion, there is no substance in the present petition and the same is dismissed.

Rule stands discharged with no order as to costs. Interim relief, if any, stands vacated.

Date : 9.4.2004 [H.K.Rathod, J.]

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